

REDWINGS HORSE SANCTUARY
ANIMAL PROTECTION INSTITUTE OF AMERICA

IBLA 97-199, 97-200

Decided March 18, 1999

Appeal from a decision by the Tonopah Field Station Manager, Bureau of Land Management, implementing a determination to gather excess wild horses within the Stone Cabin Allotment, Nevada, through a full force and effect determination. NV-060.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

APPEARANCES: Deborah Ellsworth, Carmel, California, for the Redwings Horse Sanctuary; Nancy Whitaker, Sacramento, California, for the Animal Protection Institute of America; Bruce Hill, Esq., Office of the Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Animal Protection Institute of America (APIA) and the Redwings Horse Sanctuary (Redwings; together Appellants) have appealed a decision issued by the Tonopah Field Station Manager, Bureau of Land Management (BLM), dated January 14, 1997, and amended January 28, 1997, to gather excess wild horses within the Stone Cabin Allotment in Nevada. Because of the similarity of issues involved, the separate appeals of the two Appellants have been consolidated for the Board's review.

In its January 14, 1997, Decision, BLM explained that severe drought conditions within the Stone Cabin Allotment necessitated the publication of a notice of closure for the allotment effective December 15, 1996. According to BLM, yearlong use by wild horses and livestock contributed

to the current conditions within the Stone Cabin Allotment. The accompanying wild horse removal plan called for the removal of all wild horses from the allotment on BLM administered lands. In accordance with 43 C.F.R. § 4770.3(c), BLM placed its final decision in full force and effect.

Based on public comment on the January 14, 1997, Decision, BLM amended that Decision and gather plan by its January 28, 1997, Decision. That Decision provided as a recommended management action that all wild horses above a minimum level of 50 head be removed from the Stone Cabin Allotment on BLM administered lands. BLM stated that the wild horses remaining in the allotment would be left in those areas having the greatest amounts of forage and water and that the removal effort would concentrate on those areas experiencing the greatest adverse impacts. Again, BLM placed the decision in full force and effect.

BLM's authority to manage wild horse populations is provided by the Wild Free-Roaming Horses and Burros Act (the Act), as amended, 16 U.S.C. §§ 1331-1340 (1994), and implementing regulations in 43 C.F.R. Part 4700. The provisions of 43 C.F.R. § 4770.3(c) empower the authorized officer of BLM to place wild horse removal decisions in full force and effect regardless of an appeal. A Request for Stay submitted by Appellants was denied by the Board in an Order dated March 6, 1997.

In their appeals, Appellants object to BLM's use of "emergency removal" procedures to remove wild horses from the allotment rather than imposing a closure to livestock under 43 C.F.R. § 4710.5 to protect wild horse and burro habitat. According to Appellants, the "emergency removal" allows BLM to circumvent 43 C.F.R. § 4710.5 by taking livestock off the allotment temporarily, banishing the wild horses permanently, then returning the livestock.

In its appeal, APIA requests that the removals be stopped; that supplemental feeding be provided over the winter; and that closure to livestock under 43 C.F.R. § 4710.5 be ordered until an assessment of carrying capacity is completed.

In response, BLM asserts that 43 C.F.R. § 4110.3-3(b), rather than 43 C.F.R. § 4710.5, is the correct authority for BLM action because simply removing livestock will not protect habitat for wild horses. BLM explains that both cattle and wild horses must be removed in order to protect the soil and vegetative resources for future uses such as cattle grazing, wild horses and wildlife. BLM states that feeding the horses hay over the winter is impractical due to the complex National Environmental Policy Act analysis that BLM would be required to complete. BLM notes that supplemental feeding of wild horses would also be inappropriate because such action would amount to artificially maintaining a population that the range could not support.

In response to Appellants' assertion that the wild horses would be permanently gone from the allotment, BLM states that it anticipates that the wild horses would be allowed to return to the current Appropriate Management Level of 364 head through natural recruitment and immigration from

neighboring herd areas. BLM noted that the new population level would be dependent upon additional monitoring data.

On February 24 and March 3, 1997, Appellants filed replies to BLM's response. APIA contends that based on BLM's January 21, 1997, report describing range conditions, there is no reason to believe that extensive feeding, if any, is necessary, because there is abundant winter forage available for wild horses. No evidence of such forage was presented in these submissions and no studies that would refute the BLM determination were provided. Similarly, APIA filings submitted on May 9 and August 18, 1997, do not address directly the merits of the challenged decision but rather allege overall BLM noncompliance with the Act.

[1] Section 3(b)(2) of the Act, 16 U.S.C. § 1333(b)(2) (1994), provides the statutory authority for the removal of excess wild horses from the public range. Specifically, if the Secretary (or his designate) determines, on the basis of available information,

that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken * * * until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

The goal of wild horse management is to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation and to protect the range from the deterioration associated with overpopulation. 16 U.S.C. § 1333(a) (1994); Dahl v. Clark, 600 F. Supp. 585, 593 (D. Nev. 1984); Commission for the Preservation of Wild Horses, 139 IBLA 327, 329 (1997), and cases cited. "[E]xcess animals" are defined as those "which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area." 16 U.S.C. § 1332(f) (1994). A determination that removal is warranted must be based on research and analysis and on monitoring programs that include studies of grazing utilization, trends in range condition, actual use, and climatic factors. Michael Blake, 135 IBLA 9, 14 (1996); Animal Protection Institute of America, 117 IBLA 4, 5 (1990).

The legislative history of the Act reflects that the Secretaries of Interior and Agriculture "are given a high degree of discretionary authority for the purposes of protection, management, and control of wild free-roaming horses and burros on the public lands," Conf. Rep. No. 92-681, 92nd Cong., 1st Sess. (1971), reprinted in 1971 U.S.C.C.A.N. 2159, 2160.

Departmental regulations at 43 C.F.R. §§ 4710.3-1 and 4710.4 provide that the management of wild horses is to occur within designated herd management areas (HMA's) or within more extensive "herd areas," which are defined at 43 C.F.R. § 4700.0-5(d) as the as the "geographic area identified as having been used by a herd as its habitat in 1971." A BLM decision

ordering the removal of wild horses from inside an HMA, in order to achieve statutory objectives, is committed to its sound discretion. See Animal Protection Institute of America, 109 IBLA 112, 123-24 (1989). BLM is also authorized by 43 C.F.R. § 4170.4 to remove wild horses from areas outside herd areas. Animal Protection Institute of America, 118 IBLA 20, 24-25 (1991); Craig C. Donner, 111 IBLA 332, 342 (1989).

As we noted in our March 6, 1997, Order, BLM has provided information to substantiate its claim that severe drought conditions exist within the Stone Cabin Allotment. We further noted that, on January 21, 1997, BLM sent APIA and other interested parties a 12-page report summarizing the current conditions in the allotment which included information on ecological site inventory, use pattern mapping, precipitation, critical winter range sites, and actual use by cattle and wild horses. Appellants have not submitted any studies of their own to contradict BLM's findings. Nor have they shown error in BLM's determination that severe conditions exist, and that irreparable harm to the range and wild horses will occur unless the horses are removed.

We find that Appellants' concerns are cogently and succinctly answered by BLM's responses and that those responses are supported by the record. The alleged shortcomings claimed by Appellant with the removal action are unsupported by evidence and fail to cast doubt on either the necessity or propriety of the removal or its conformance to applicable law and regulation. As we have previously held in appeals of horse removal actions, the burden is on the appealing party to show that BLM's experts erred in collecting the data on which the removal is based, in interpreting that data, or in reaching the conclusions to which it led. Commission for the Preservation of Wild Horses, *supra*, at 330-31. Moreover, BLM is not required to wait until the range is damaged before it takes preventive action; proper range management dictates herd reduction before the herd causes damage to the rangeland. If the record establishes current resource damage or a significant threat of resource damage, removal is warranted.

Appellants have not shown that this removal was based on erroneous information or was unnecessary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge